

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT H. JOHNSTON

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Appeal No. 2004-0404  
Application No. 08/992,878

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ON BRIEF

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Before FRANKFORT, McQUADE and NASE, Administrative Patent Judges.  
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Robert H. Johnston originally took this appeal from the final rejection (Paper No. 20) of claims 1, 3, 6, 8 and 19, all of the claims pending in the application. Upon consideration of the appellant's main brief (Paper No. 23), the examiner issued an Office action (Paper No. 24) reopening prosecution and entering a superseding rejection of the claims. Pursuant to 37 CFR § 1.193(b)(2)(ii), the appellant then filed a supplemental brief (Paper No. 26) with a request that the appeal be reinstated. Implicitly granting the request, the examiner entered an answer (Paper No. 27), noted a reply brief (Paper No. 28) filed by the

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appellant and forwarded the application to this Board for review of the new rejection of claims 1, 3, 6, 8 and 19.

This is the second appeal to this Board involving the instant application. A decision in the first appeal (Appeal No. 2001-2299), generally favorable to the appellant, issued on October 9, 2001 (Paper No. 16).

#### THE INVENTION

The invention relates to an envelope for packaging and displaying seeds. Representative claims 1 and 19 read as follows:

1. A seed envelope comprising:

(a) a folded sheet having a front face including an aperture, a back face, a bottom edge, a top edge, a first side edge and a second side edge extending opposite each other from said top edge to said bottom edge, height and width dimensions of a seed envelope being a height from said top edge to said bottom edge between about 9 cm and about 15 cm, and a width from said first side edge to said second side edge between about 6 cm and about 10 cm, said height being greater than said width, said aperture being closer to said bottom edge than to said top edge; said aperture being spaced between about  $\frac{1}{2}$  cm and about 2 cm from said bottom edge, and at least  $\frac{1}{2}$  cm from each of said side edges, the aperture having a width of at least 1 cm, whereby a desired quantity of seeds placed within the seed envelope is seen through the aperture when the seed envelope rests on its bottom edge while retaining sufficient structural stability to permit the insertion of the seeds without being destroyed; and

(b) a transparent sheet attached to said front face covering said aperture.

19. A seed envelope comprising:

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(a) a folded sheet having a front face including an aperture, a back face, a bottom edge, a top edge, a first side edge and a second side edge extending opposite each other from said top edge to said bottom edge, said aperture being closer to said bottom edge than to said top edge; said aperture being spaced between about  $\frac{1}{2}$  cm and about 2 cm from said bottom edge, and at least  $\frac{1}{2}$  cm from each of said first side edge and said second side edge, the aperture and the envelope each having a width, the width of the aperture being about 80% of the width of the envelope; and

b) a transparent sheet attached to said front face covering said aperture.

#### THE PRIOR ART

The references relied on by the examiner as evidence of obviousness are:

Lewis	1,799,428	Apr. 7, 1931
Tullar	1,962,921	Jun. 12, 1934
Buttery	3,835,988	Sep. 17, 1974
Warfield	5,611,426	Mar. 18, 1997
Fothergill (British Patent Document)	2,260,531	Apr. 21, 1993

#### THE REJECTION

Claims 1, 3, 6, 8 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fothergill in view of Tullar, Lewis and either Buttery or Warfield.

Attention is directed to the main, supplemental and reply briefs (Paper Nos. 23, 26 and 28) and to the answer (Paper No.

27) for the respective positions of the appellant and the examiner regarding the merits of this rejection.

#### DISCUSSION

Fothergill, the examiner's primary reference, discloses a seed packet or envelope 12 made from the folded blank 1 shown in Figures 1 and 2. The packet can include a cellulose or glassine window on either or both of its sides to facilitate identification of its contents (see page 4, lines 12 through 15). Fothergill does not provide any detail as to the size or position of such windows relative to the sides of the packet.

While finding general correspondence between the window(s) described by Fothergill and the aperture recited in independent claims 1 and 19, the examiner concedes (see page 3 in the answer) that Fothergill's broad disclosure of the window(s) does not respond to the specific dimensional limitations in independent claims 1 and 19 defining the size and position of the aperture. To overcome this deficiency, the examiner turns to Tullar, Lewis and either Buttery or Warfield.

Tullar discloses a letter envelope A of standard size and shape (see Figures 1 and 3) for mailing items such as a check F having the addressee's name and address printed thereon. The

envelope includes a window opening B covered with a transparent sheet C to permit the name and address to be seen for mailing purposes.

Lewis discloses a multi-compartment envelope having transparent windows through which the contents of the compartments may be viewed. The exemplary embodiment shown in the drawing figures includes a compartment and translucent window 22 for automobile license plates and a compartment and translucent window 2 for a license card bearing the name and mailing address of the party for whom the plates are intended.

Buttery discloses "paperboard cartons for packaging items such as sliced meat products, e.g., bacon, and the like, and provided with a window opening in the carton for inspection of the contents contained therein" (column 1, lines 6 through 10).

Warfield discloses a packaging assembly 10 for compact discs comprising a paperboard box 22 having a window 24 in its forward wall 23, and a tiered support 20 for holding the compact discs 12 within the box such that they are visible through the window. According to Warfield, "[t]he window 24 . . . can be any size, provided the window 24 is large enough to enable a person looking at the packaging assembly 10 to view at least fifty percent of

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the surface area of each compact disc 12 left exposed on the tiered support 20" (column 3, lines 22 through 27).

As is evident from the foregoing descriptions, the Fothergill, Tullar, Lewis, Buttery and Warfield references pertain to distinctive packages for diverse products. None of them is particularly responsive to the specific dimensional limitations set forth in claims 1 and 19. The only suggestion for combining their disparate teachings in the manner proposed by the examiner so as to arrive at the subject matter recited in claims 1 and 19 stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1 and 19, and dependent claims 3, 6 and 8, as being unpatentable over Fothergill in view of Tullar, Lewis and either Buttery or Warfield.

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SUMMARY

The decision of the examiner to reject claims 1, 3, 6, 8 and  
19 is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JOHN P. McQUADE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

JPM/gjh

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